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10 OXNARD POLICE DEPARTMENT, JOHN CROMBACH,
11 and ANDREW SALINAS

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 MARIA LAZOS, et al.,) No. CV 08-02987 RGK (SHx)
15)
16 Plaintiffs,) [consolidated w/
17) No. CV 08-05153 RGK (SH)]
18 v.)
19) **DEFENDANTS' OPPOSITION TO**
20 CITY OF OXNARD, et al.,) **PLAINTIFFS' MOTION IN**
21) **LIMINE NO. 1; DECLARATION**
22 Defendants.) **OF DEFENSE COUNSEL**
23)
24) Date : August 11, 2009
25) Time : 9:00 a.m.
26 AND CONSOLIDATED ACTION.) Ctrm : 850 Roybal
27)
28)

29 Defendants hereby oppose plaintiffs' Motion in Limine No. 1
30 regarding exclusion of evidence of decedent's criminal background.

31 **I.**

32 **PLAINTIFFS FAILED TO TIMELY MEET AND CONFER AS**
33 **REQUIRED BY LOCAL RULE 7-3**

34 Plaintiffs failed to timely meet and confer. Pursuant to
35 Local Rule 7-3, counsel contemplating the filing of any motion
36 shall first contact opposing counsel to discuss thoroughly the
37 substance of the contemplated motion at least twenty (20) days
38 prior to the filing of the motion. Pursuant to the Court's

1 standing orders, motions in limine are to be filed and served a
2 minimum of forty-five (45) days prior to the scheduled trial date
3 of August 11, 2009, which is June 27, 2009. Since June 27 is a
4 Saturday, the motion is to be filed by June 26. Based upon a
5 June 26 filing date, any meet and confer effort would have to be
6 completed by June 6, 2009 (twenty days prior). Plaintiffs did not
7 attempt to meet and confer by identifying the anticipated motions
8 in limine until June 11, 2009 (Exhibit A). The Court should note
9 that plaintiffs' motion fails to include the requisite language of
10 L.R. 7-3, advising the Court of the date of the meet and confer,
11 obviously because it was untimely. As such, because the motion is
12 untimely, it should not be considered by the Court.

13 **II.**

14 **CONTRARY TO PLAINTIFFS' CONTENTION, THE EVI-**
15 **DENCE IS RELEVANT AND THEREFORE ADMISSIBLE**

16 Evidence pertaining to the decedent's criminal history is
17 relevant to the issue of damages. Plaintiffs are seeking to
18 recover damages for the death of their son. Because 42 U.S.C.
19 §1983 is silent with regard to damages, damages are to be deter-
20 mined in accordance with principles of torts. *Memphis Community*
21 *School District v. Stachura*, 477 U.S. 299 (1986). Plaintiffs are
22 seeking an award for survivors' losses of support, society, and
23 companionship, among other damages.

24 The evidence of decedent's recent criminal history is directly
25 relevant, material, and admissible as relating to and affecting the
26 amount of the pecuniary loss, if any, suffered by the plaintiff
27 parents because of their son's death. The nature of decedent's
28 criminal background, the number of convictions, and the number of

1 felony strikes all go to the issue of damages. They are an
2 indicator of how productive the decedent was, the likelihood of his
3 becoming a productive member of society, and evidence of the nature
4 of the relationship the decedent had with the plaintiffs.

5 The evidence, although harmful to plaintiffs' case, is not
6 unfairly prejudicial. The probative value of the evidence far
7 exceeds any prejudicial effect on plaintiffs' case. To omit the
8 evidence would be highly prejudicial to the defense.

9
10 Dated: July ____, 2009

11 LAW OFFICES OF ALAN E. WISOTSKY

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13 By: _____
14 DIRK DeGENNA
15 Attorneys for Defendants,
16 CITY OF OXNARD, OXNARD POLICE
17 DEPARTMENT, JOHN CROMBACH, and
18 ANDREW SALINAS
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DECLARATION OF DIRK DEGENNA

I, Dirk DeGenna, declare as follows:

1. I am an attorney admitted to practice law before all the courts of the State of California and the United States District Court, Central District of California, and am an associate in the Law Offices of Alan E. Wisotsky, attorneys of record for defendants in this action. I make this declaration of my own personal knowledge, except as to the information declared on information and belief, and if called upon to testify, I could and would do so competently.

2. Plaintiffs' counsel did not make an effort to meet and confer regarding potential motions in limine until June 11, 2009, when by way of correspondence dated that same day, plaintiffs' counsel identified 23 anticipated motions in limine.

3. Attached hereto as Exhibit A is a true and correct copy of the June 11, 2009, correspondence.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July ____, 2009, at Oxnard, California.

DIRK DEGENNA